

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MARC D. SOBEL)	File No. 670861
)	
Application For Consent to Assign the License)	
For Conventional 800 MHz SMR)	
Station KKT934, Montrose, California)	

ORDER

Adopted: May 9, 2007

Released: May 10, 2007

By the Commission:

I. INTRODUCTION

1. On June 1, 2005, Marc D. Sobel (Sobel) filed a second petition seeking reconsideration (Second Petition)¹ of the Commission's *Memorandum Opinion and Order* released on May 2, 2005, affirming the dismissal of the above-captioned assignment application (*Commission Order*).² The *Commission Order* denied Sobel's Application for Review and affirmed the Mobility Division's (Division's) order released on February 6, 2004 (*Division Order*), which denied Sobel's first petition seeking reconsideration of the dismissal of his assignment application (First Petition).³ For the reasons discussed below, we dismiss Sobel's Second Petition as repetitious.

II. BACKGROUND

2. On June 9, 1994, Sobel filed an application seeking approval of the assignment of the license for conventional Business Radio (GB) Station KKT934 (Montrose, CA) from M.R. Groff (Groff) to Sobel.⁴ On June 24, 2002, the former Commercial Wireless Division's Licensing and Technical Analysis Branch (Branch)⁵ issued a standard letter reminding Groff that a renewal application was due for Station KKT934 because the expiration date of his license was September 16, 2002. Groff, however, did not submit a license renewal application and the license automatically terminated as of the expiration date on

¹ Petition for Reconsideration, filed by Marc D. Sobel (June 1, 2005).

² In the Matter of Marc D. Sobel for Consent to Assign the License For Conventional 800 MHz SMR Station KKT934, Montrose, California, *Memorandum Opinion and Order*, 20 FCC Rcd 9288 (2005).

³ In the Matter of Marc D. Sobel for Consent to Assign the License For Conventional 800 MHz SMR Station KKT934, Montrose, California, *Order*, 19 FCC Rcd 2190 (2004).

⁴ In his assignment application, Sobel also sought approval to convert the station license to conventional SMR service (GX) and to add two more sites to the license. See 47 C.F.R. § 90.615 (listing the 150 General Category channels available for use as 800 MHz SMR General Category channels).

⁵ In late 2003, the Commission's Wireless Telecommunications Bureau (Bureau) was reorganized. Many of the mobile radio services licensing issues formerly under the Bureau's Commercial Wireless Division, including Part 90 conventional Specialized Mobile Radio (SMR) operations, are now under the purview of the Bureau's Mobility Division. See FCC's Wireless Bureau Announces Reorganization, *Public Notice* (rel. Nov. 24, 2003).

the license.⁶ On January 12, 2003, the Branch dismissed Sobel's assignment application because the license for Station KKT934 had expired.⁷

3. Sobel filed his First Petition seeking reconsideration of the dismissal of his assignment application on February 11, 2003, making three arguments. First, Sobel argued that expiration of the underlying license did not justify the dismissal of a pending assignment application for that license.⁸ Second, Sobel argued that under section 9(b) of the Administrative Procedure Act (APA),⁹ his pending assignment application extended the effectiveness of the underlying license until the Commission acted on his application, and thus his application should have been processed even though the license expiration date had passed.¹⁰ Third, Sobel argued that the application would have been granted before the license expired, but the Bureau "ignored" his assignment application so that it could dismiss the application after the underlying license expired.¹¹ Sobel relies on these arguments throughout this proceeding.

4. On February 6, 2004, the Division denied Sobel's First Petition and affirmed the Branch's dismissal of Sobel's assignment application noting that the arguments Sobel had raised in this case were identical to arguments previously rejected in two Commission orders, *Kay-Padilla* and *Kay-Cordaro*.¹² Relying on the Commission's findings in those cases, the Division found that the filing of Sobel's assignment application did not relieve Groff, as a Commission licensee, of the responsibility to renew his license, and that a licensee could not assign an expired license;¹³ an assignment application, in this case Sobel's, is not protected from dismissal under section 9(b) of the APA, which permits an existing licensee to continue to operate while its renewal application is pending;¹⁴ and the delay in processing Sobel's application was not a "scheme" to delay processing Sobel's application, but that Groff's inaction lead to dismissal of Sobel's application.¹⁵

⁶ Under former rule section 90.149(b), effective at the time Sobel filed his assignment application, if a licensee failed to file a renewal application, the license was deemed to have automatically cancelled on the date specified on the authorization. 47 C.F.R. § 90.149(b) (1995). The currently effective rule, section 1.955(a)(1), is not substantively different from the rule effective at the time Sobel filed his assignment application. 47 C.F.R. § 1.955(a)(1) (providing that "[a]uthorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed").

⁷ ULS Automated Letter Information, Reference No. 1691209 (Jan. 12, 2003).

⁸ Petition for Reconsideration, filed by Marc D. Sobel at 1-2 (Feb. 11, 2003) (First Petition).

⁹ 5 U.S.C. § 558(c).

¹⁰ First Petition at 1-2.

¹¹ *Id.* at 2.

¹² *Division Order*, 19 FCC Rcd at 2191 ¶ 4 (citing *In the Matter of James A. Kay, Jr., Application for Modification of and Consent to the Assignment of the License for Business Radio Service Station WIK902, Order*, 18 FCC Rcd 2366 (2003) (*Kay-Padilla*); *In the Matter of James A. Kay, Jr., Application for Consent to Assign the License for Conventional SMR Station WNXR890, Newbury Park, California, Memorandum and Opinion and Order*, 18 FCC Rcd 7585 (2003) (*Kay-Cordaro*)). In both cases, James A. Kay, Jr. filed assignment applications in 1994, after which the underlying licenses expired while the assignment applications were pending because the licensees failed to file renewal applications. The assignment applications were dismissed in 2000.

¹³ *Division Order*, 19 FCC Rcd at 2191 ¶ 4.

¹⁴ *Id.* at 2191-92 ¶ 5.

¹⁵ *Id.* at 2192 ¶ 6.

5. On March 3, 2004, Sobel filed an Application for Review of the *Division Order*, in which he reiterated his arguments from the First Petition. The Commission denied Sobel's Application for Review agreeing with the Division that Sobel's arguments were identical to arguments previously raised and rejected in the Commission's *Kay-Padilla* and *Kay-Cordaro* decisions. The Commission noted that it had held in both cases that a pending assignment application does not extend the expiration date of an underlying Commission license.¹⁶ The Commission explained that a licensee remains subject to Commission rules, including operational and renewal provisions, even where an assignment or transfer of control application is pending for the underlying license.¹⁷ The Commission found that Groff was responsible for filing a renewal application notwithstanding the pending assignment application; that because Groff did not renew his license, Station KKT934 expired on its own terms; and because an expired license cannot be assigned, the Branch correctly applied Commission rules when it dismissed the assignment application.¹⁸

6. Further, the Commission disagreed with Sobel's contention that his assignment application was protected from dismissal under section 9(b) of the APA and found no merit in Sobel's contention that staff unilaterally imposed a "freeze" on his application or that the Division could have conditionally granted his assignment application subject to the outcome of the ongoing license revocation proceedings against Sobel.¹⁹ Sobel now seeks reconsideration of the *Commission Order*.

III. DISCUSSION

7. We dismiss Sobel's Second Petition as repetitious under section 1.106(b) of our rules because he fails to support his arguments with any new facts or changed circumstances that have not previously been addressed by the Commission.²⁰ In his Second Petition, Sobel again maintains that the Commission misconstrued his argument in concluding that "a pending assignment application does not

¹⁶ *Commission Order*, 20 FCC Rcd at 9290 ¶ 5 (citing *Kay-Padilla*, 18 FCC Rcd at 2367 ¶ 5; *Kay-Cordaro*, 18 FCC Rcd at 7586 ¶ 5).

¹⁷ *Id.* at 9290 ¶ 5 (citing *In the Matter of Peacock's Radio and Wild's Computer Service, Inc.*, and 21st Century Wireless Group, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 15016, 15017-18 ¶¶ 5 & 6 (2001); *In the Matter of Applications of Robert D. Ryan, Order on Reconsideration*, 17 FCC Rcd 15530, 15532 ¶ 8 (PSPWD 2002); *see also* Biennial Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476, 11485 ¶ 21 (1999)).

¹⁸ *Id.* at 9290 ¶ 5 (citing *Kay-Padilla*, 18 FCC Rcd at 2367 ¶ 5; *Kay-Cordaro*, 18 FCC Rcd at 7586-87 ¶ 5).

¹⁹ *Id.* at 9290-91 ¶¶ 6-7. The Commission found that Sobel neither presented any evidence that the Bureau's uncharacteristic delay in acting on his application was the result of some staff decision to ignore or freeze his applications, nor presented any evidence that he ever sought a conditional grant of his assignment application. *Id.* at 9290-91 ¶ 7.

²⁰ 47 C.F.R. § 1.106(b). Section 1.106(b)(2) of the Commission's Rules provides that "[w]here the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances is present: '(i) [t]he petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters, or (ii) [t]he petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.'" 47 C.F.R. § 1.106(b)(2). Section 1.106(b)(3) provides that "[a] petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed by the staff as repetitious." 47 C.F.R. § 1.106(b)(3).

extend the expiration of an underlying Commission license.”²¹ Sobel reiterates that because his application for the assignment of Groff’s existing license was equivalent to filing an application for a new license,²² section 9(b) of the APA protects his application from dismissal.²³ Specifically, Sobel contends that because the application he filed with the Commission required him, as the assignee, to provide the same technical information regardless of whether he was seeking an assignment of an existing license or authority to operate under a new license, the Commission should have treated his application as an application for new facilities.²⁴

8. Sobel’s arguments, however, provide no new facts or changed circumstances that would warrant a reversal of our finding in the *Commission Order* that his application was a license assignment and not a renewal or new application.²⁵ Indeed, Sobel’s assertion that his application for assignment of Groff’s existing license was equivalent to filing an application for a new license is without merit. The application filed by Sobel was clearly identified as an application for assignment – not as an application for a new license. As previously stated in response to the identical argument made under the same circumstances in *Kay-Padilla*, an unsupported assertion that an assignment application should be considered a new facilities application is of no merit, when “by its very terms, the application sought the assignment of an existing license, as opposed to a license for a new station.”²⁶

9. Moreover, Sobel’s argument that the information he submitted was filed on a different form from the assignor’s, showing that his application was an application for new facilities, also does not rely on new facts or changed circumstances. This argument also fails on the merits. The fact that the Commission had different filing requirements for license assignors and assignees – and the fact that assignees and new licensees were required to file the same technical information – does not convert an application for assignment into an application for a new license. As we stated in *Kay-Padilla*, “[p]rocedures and specific applications are in place for specific functions.”²⁷ We also find no basis to

²¹ Second Petition at 1 (citing *Commission Order*, 20 FCC Rcd at 9290 ¶ 5).

²² *Id.* at 1-2.

²³ *Id.* at 3-4. The relevant portion of section 9(b) of the APA, upon which Sobel relies, provides that “[w]hen the licensee has made timely and sufficient application for a renewal or new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.” 5 U.S.C. § 558(c).

²⁴ Second Petition at 2. Under the procedures in effect in 1994, the assignee of a license was required to submit FCC Form 574, a general application form for “Private Land Mobile and General Mobile Radio Services.” FCC Form 574 required applicants to provide technical information about the relevant station. The form also required the applicant to select the appropriate box indicating whether the application was for (1) a new station, (2) modification, (3) assignment, (4) reinstatement, or (5) renewal. Because Sobel checked the box indicating that his application was for an assignment of license, the application was treated accordingly.

²⁵ *Commission Order*, 20 FCC Rcd at 9290 ¶ 6.

²⁶ *Kay-Padilla*, 18 FCC Rcd at 2368 ¶ 7 (citing *In re Applications of James A. Kay, Jr., For Modification of Stations WNQK532, WIJ992, WIJ893, and WII621 and Assignment of Station WIK902*, *Memorandum Opinion and Order*, 17 FCC Rcd 5951 (PSPWD 2002)).

²⁷ *Kay-Padilla*, 18 FCC Rcd at 2368-69 ¶ 7 (stating that the assertion that the assignee’s information happened to be submitted on a different form from the assignor’s information places form over substance). Under the procedures in effect in 1994, both FCC Forms 574 and 1046 were required to be filed to assign an existing station from the licensee to another eligible party. FCC Form 574 was filed by the assignee and FCC Form 1046 was filed by the assignor of the license. By filing FCC Form 1046, the licensee certified that it proposes the assignment of all its right, title and interest in the authorization to the assignee, thus evidencing the licensee’s intent to assign the subject license.

conclude that Sobel's assignment application was treated any differently than any other similarly filed assignment application.²⁸ Sobel's contention that not treating his application as an application for a new license is discriminatory is unfounded and provides no new facts or changed circumstances that would cause us to reconsider our decision in this proceeding.

10. Not only does Sobel fail to present any new facts or changed circumstances regarding his argument that his assignment application is an application for a new license, he also fails to present anything new or changed in terms of his argument that section 9(b) of the APA protects his assignment application from dismissal under the facts of these proceedings. On this point, Sobel contends that section 9(b) protects his license from dismissal because he "intended" that his application was for a "new license" that would authorize "an activity of a continuing nature," namely, the technical authority authorized by the previous license."²⁹ But Sobel misinterprets section 9(b) of the APA. As the Commission stated in the *Commission Order*, the last sentence of section 9(b) applies to renewal and new applications, not to assignment applications.³⁰ We therefore again reject the notion that a license assignment should be treated as synonymous to an initial grant or a license renewal for purposes of this statutory provision.³¹

11. Lastly, we reject Sobel's contention that the staff's "unreasonable delay" in acting on his assignment application brought about the dismissal of his assignment application. Renditions of Sobel's delay argument have been previously considered and rejected.³² Once again, Sobel does not provide any new facts or circumstances that would now warrant a deviation from our decision that delay in acting on the assignment application caused its dismissal. As we stated previously, Sobel entirely overlooks the fact that it was Groff's failure to file for renewal, not the staff's alleged inaction on the assignment application that caused the license for Station KKT934 to expire. Because Groff failed to file a renewal application, the license expired on its own terms and, therefore, there was nothing to assign. It is well-established that licensees are responsible for submitting renewal applications in a timely manner.³³

²⁸ Sobel's argument on this point in the Second Petition is a further elaboration of arguments posed earlier. Specifically, Sobel claims that applicants seeking consent to assign existing licenses for common carrier radio services at the time he filed his assignment application were not required to fill out technical information on assignment applications. He then argues that it is discriminatory to subject Sobel, as an SMR assignee, to the same application preparation as a new applicant, "but then to prejudice him by declining to treat his filing as an application for a new license." Second Petition at 2. Sobel also claims, under a hypothetical, that if he had filed an application for a new license with a short-spacing consent letter from Groff allowing Sobel to construct closer to Groff's neighboring transmitter sites, the expiration of Groff's license would not have affected the continuing viability of Sobel's application for a new license. He then concludes that the assignor's FCC Form 1046 was "virtually indistinguishable" from a short-spacing consent letter and that it is discriminatory for the Commission to treat the assignor's FCC Form 1046 and a consent letter differently. Second Petition at 2-3, n.2. We find that these arguments raise no new facts or circumstances and we reject them as repetitious.

²⁹ *Id.* at 3.

³⁰ *Commission Order*, 20 FCC Rcd at 9290 ¶ 6 (citing *Kay-Padilla*, 18 FCC Rcd at 2368-69 ¶ 7; *Kay-Cordaro*, 18 FCC Rcd at 7587 ¶ 6).

³¹ *See id.*

³² In the *Commission Order*, we concluded that Sobel had not presented any evidence that the Bureau's uncharacteristic delay in acting on his application was the result of some staff decision to ignore or freeze his applications. *Commission Order*, 20 FCC Rcd at 9290-91 ¶ 7.

³³ *Commission Order*, 20 FCC Rcd at 9290-91 ¶ 7.

IV. CONCLUSION

12. Because Sobel raises no new facts or circumstances that would warrant a reversal of our previous decision to deny the Application for Review, we dismiss the Second Petition as repetitious.

V. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and Section 1.106(b) of the Commission's Rules, 47 C.F.R. § 1.106(b), the Petition for Reconsideration filed by Marc D. Sobel on June 1, 2005, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary.